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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,057	01/22/2002	Frederick S.M. Herz	REFH-0153	3878
23377 7590 12/09/2008 WOODCOCK WASHBURN LLP CIRA CENTRE, 12TH FLOOR 2929 ARCH STREET PHILADELPHIA, PA 19104-2891			EXAMINER KESACK, DANIEL	
			ART UNIT 3691	PAPER NUMBER
			MAIL DATE 12/09/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/054,057
Filing Date: January 22, 2002
Appellant(s): HERZ ET AL.

Michael P. Dunnam
For Appellant

EXAMINER'S ANSWER

This Supplemental Examiner's Answer is in response to the order from the Board of Patent Appeals and Interferences dated 12/3/2008.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

NEW GROUND(S) OF REJECTION

Claims 2-6 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Roesler, M. and Hawkins, D.T., "Intelligent Agents" Online, Vol. 18, No. 4 (July 1994), pp. 19-32.

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Wuthrich, B., "Daily Stock Market Forecast from Textual Web Data", IEEE, 0-7803-4778-1/98 (1998), pp. 2720-2725.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 101(new grounds)

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 2-6 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent, a proper process must be tied to another statutory class or transform underlying subject matter to a different state or thing (*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)). Since neither of these requirements is met by the claim, the method is not considered a patent eligible process under 35 U.S.C. 101. To qualify as a statutory process, the claim should positively recite the other statutory class to which it is tied, for example by identifying the apparatus that accomplished the method steps or positively reciting the subject matter that is being transformed, for example by identifying the material that is being changed to a different state. In the instant case, the claims are directed to a method of extracting, relating, determining and predicting changes in prices of stock. However, the method claims lack any recitation of being tied to another statutory class (e.g. some of the steps performed on a computer)

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or do not positively recite the subject matter being performed. Therefore, the claims are non-statutory.

Claim Rejections - 35 USC § 103

2. Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wuthrich et al. and Roesler et al.

Wuthrich et al. disclose predicting the stock market from news using data mining(entire article).

Wuthrich et al. disclose the invention except interpreting words as pronouns. Such an interpretation requires artificial intelligence and neural network technologies. However, in pages 26 and 28, Roesler et al. disclose using intelligent agents to locate items. It would be obvious to one of ordinary skill in the art to modify the invention of Wuthrich et al. based on the teachings of Roesler et al. The motivation to combine these references is to efficiently and effectively predict the stock market from news data.

(10) Response to Argument

Wuthrich et al.(entire article) discloses predicting the stock market from TEXTUAL web data which is what the inventor discloses. Roesler et al. discloses on page 28: "information extraction(allows the creation of information retrieval agents to extract specific information from textual

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databases, such as expected trends in the stock market based on quoted analyst predictions, or information about mergers and acquisitions)."

Both of these references disclose contextual analysis to formulate predictions of a future event. This type of interpretative computer analysis would have to use artificial intelligence to translate contextual material into a meaningful predictor. The inventor is not really providing details about the mechanics of his invention to distinguish how it is different from Wuthrich et al. and Roesler et al.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

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(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

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Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Daniel Kesack/

Examiner, AU 3691

/Alexander Kalinowski/

Supervisory Patent Examiner, Art Unit 3691

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

Wynn Coggins

Director, TC 3600



Conferees:

/A. K./

Supervisory Patent Examiner, Art Unit 3691

/V.M./ Vincent Millin

Appeals Conference Specialist